

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555(JMP)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

June 29, 2009

2:06 PM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

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HEARING re LBHI's Motion for Authorization to Make a Capital
Contribution to Aurora Bank
FSB

HEARING re Debtors' Motion for Establishment of the Deadline
for Filing Proofs of Claim, Approval of the Form and Manner of
Notice Thereof and Approval of the Proof of Claim Form

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Be seated, please. Mr. Krasnow?

MR. KRASNOW: Good afternoon, Your Honor. Richard Krasnow, Weil Gotshal & Manges LLP, for the Chapter 11 debtors. Your Honor, if we can turn to the first item on the agenda -- and that relates to the debtors' motion and supplemental motion seeking authority to make a further capital contribution to Aurora Bank of up to fifty million dollars.

Your Honor, the motion and supplemental motion were duly noticed. There have been no responses whatsoever with respect to these requests although we've been advised by the creditors' committee that they do support it.

In light of that, Your Honor, and in light of the rather full afternoon that the Court has on the other matter, I would suggest that we would simply refer to our motion and supplemental motion and, for the reasons indicated therein, request that the Court grant the relief that's sought.

THE COURT: I'm prepared to do that. I would just like to hear from the creditors' committee regarding their analysis of the situation.

MR. O'DONNELL: Your Honor, Dennis O'Donnell, Milbank Tweed Hadley & McCloy on behalf of the creditors' committee. Your Honor, we do support this request as we have supported the four or five prior requests with respect to the banks. The committee, based on the limited information it has and with

1 full acknowledgment of risks that may exist here, believe that
2 this is the best possible course for the debtors to pursue with
3 respect to the banks. The stated purpose and its purpose, we
4 concur of this application is to permit the bank or LBB Aurora
5 to continue to pursue seeking permission from the regulators to
6 begin to issue CDs again. And we believe that is the best
7 possible outcome or best possible course for LBB to pursue. It
8 would basically allow them to help themselves get back on a
9 firm potential footing. And we believe that this application
10 will facilitate that and we hope that the regulators in whose
11 hands that decision rests will concur and everyone's conclusion
12 here that this makes sense for both the creditors of these
13 estates and the depositors of these banks.

14 THE COURT: Fine. It's an unopposed motion and the
15 creditors' committee endorses it recognizing that nothing in
16 life is certain including the funding of this bank. And so,
17 the motion's approved.

18 MR. KRASNOW: Your Honor, the funding must be made by
19 no later than tomorrow. I do have the disk and if I may
20 approach --

21 THE COURT: You may approach.

22 MR. KRASNOW: Thank you, Your Honor.

23 THE COURT: Anyone who's here simply on the Aurora
24 matter who would like to leave may leave.

25 MR. KRASNOW: Thank you, Your Honor.

1 MR. WAISMAN: Good afternoon, Your Honor. Shai
2 Waisman, Weil Gotshal & Manges. The second and only other item
3 on the agenda today is the debtors' adjourned motion to
4 establish a bar date in these cases. This hearing was
5 commenced on Wednesday of last week and adjourned to this
6 afternoon. I think, as noted in some of the papers that were
7 filed, significant progress has been made. We are in the midst
8 of discussions with a few remaining parties and I think
9 everyone would benefit from a brief recess, perhaps fifteen
10 minutes, and we can apprise Chambers of where we stand at that
11 point.

12 THE COURT: Let's make it twenty minutes. That will
13 get us to 2:30 as a witching hour. And good luck in resolving
14 what you can resolve.

15 MR. WAISMAN: Thank you, Your Honor.

16 THE COURT: We're adjourned till then.

17 (Recess from 2:10 p.m. until 2:36 p.m.)

18 THE COURT: Be seated, please. I have no idea what
19 you want.

20 MR. COHN: My name is Josh Cohn of Allen & Overy on
21 behalf of the International Swaps and Derivatives Association.
22 We've had an amicus brief pending on motion for two weeks and
23 I'd love to get it out of the way.

24 THE COURT: Mr. Waisman, do you have any problem with
25 this visitor from the trade association?

1 MR. WAISMAN: I do not, Your Honor.

2 THE COURT: Why don't you come forward?

3 MR. COHN: Thank you. Thank you, Your Honor. We
4 don't understand the articulation of debtors' counsel's
5 objection to our brief. Our brief is filed with the Court
6 subject to a reservation with respect to standing. We would
7 like to resolve the standing of the International Swaps and
8 Derivatives Association with respect to the brief.

9 I can go forward or perhaps Mr. Waisman would like to
10 voice the objection.

11 THE COURT: I'm not sure what the agenda looks like
12 for this afternoon and I'm going to be relying on debtors'
13 counsel to determine the order of play so we can make this as
14 efficient as possible. Mr. Waisman, is this something that we
15 can address now or would you prefer to deal with it another
16 time?

17 MR. WAISMAN: Your Honor, I'm happy to address it
18 now. As we've said for some time, we have no opposition to the
19 filing of the motion with reservation of all the debtors'
20 rights as to who and what is said in the brief.

21 THE COURT: Let me tell you. I read the brief.

22 MR. COHN: Thank you.

23 THE COURT: So to the extent that the purpose of
24 having filed it was to have somebody like me read it, you've
25 already accomplished that objective.

1 In terms of your standing to appear and be heard
2 during argument in reference to unresolved questions on the
3 treatment of derivatives this afternoon, I gather there's a
4 continuing standing objection which may or may not be pressed
5 depending upon where we are in the process and whether you're a
6 friend of foe.

7 MR. COHN: And actually, at this juncture, we have
8 nothing to say with respect to what goes on in the remainder of
9 this afternoon. The International Swaps & Derivatives
10 Association has not had an opportunity to canvass its
11 membership for a consensus position. Our brief was really
12 directed towards the bar date order that is being withdrawn.
13 And I'm simply here to make sure that the reply -- that our
14 brief is actually in the record. I tried to engage Mr. Waisman
15 last week and over the weekend to find out exactly what his
16 remaining objection might be and was unable to find out.

17 So, if in fact the brief is in the record of the
18 proceedings then I'm done, Your Honor.

19 THE COURT: I'm not sure that it's in the record.
20 But I don't know that it matters that it be in the record
21 unless it matters to you. Let's find out.

22 MR. WAISMAN: Just one clarifying point. There was a
23 statement --

24 THE COURT: You haven't withdrawn the --

25 MR. WAISMAN: I haven't withdrawn the bar date

1 motion.

2 THE COURT: I know you haven't withdrawn it.

3 MR. WAISMAN: And as Your Honor noted, the brief is
4 on file for what it's worth. And we reserve the right to the
5 extent they take a position with respect to a particular
6 objection or issue to assert all of our rights and responses.
7 And I'm hoping we can agree that that's the way forward and
8 move on with the agenda.

9 THE COURT: Okay. We're in a zone of ambiguity. Is
10 that okay with you?

11 MR. COHN: I'd appreciate clarification. If you
12 wouldn't mind, Your Honor, industry associations commonly
13 appear as amicus. I'm not sure what the nature of the
14 obstruction is here. The International Swaps & Derivatives
15 Association publishes the ISDA master agreement and we
16 submitted our brief with respect to how we think the ISDA
17 master agreement interfaces potentially with the bankruptcy
18 court and the bankruptcy court's rules and procedures.

19 We believe that under Section 105(a) and under
20 Bankruptcy Rule 9029(b), you have ample authority simply to say
21 within your discretion that the brief is filed. And we're
22 perfectly happy to leave any other participation in this
23 proceeding to whatever objections Mr. Waisman cares to make.

24 THE COURT: Well, if it's important to you for the
25 brief to be filed, I can tell you that it's attached to a

1 motion requesting leave to file --

2 MR. COHN: Yes, it is.

3 THE COURT: -- an amicus brief. And because I read
4 the brief that was attached to the motion, it's better than
5 filed; it's actually read which is about -- which is more than
6 you can say for a lot of things that are filed.

7 So, to that extent, I'd declare victory and leave.

8 MR. COHN: Well, I think I probably should take your
9 advice on that, Your Honor. So thank you very much.

10 THE COURT: Okay.

11 MR. WAISMAN: Okay. Try that again, Your Honor.

12 Good afternoon. Shai Waisman, Weil Gotshal & Manges, again for
13 the record on behalf of the debtors. Your Honor, the only
14 remaining matter on the agenda is the debtors' motion to
15 establish a bar date. The motion appears at docket 3654 and
16 was filed on May 26th. It was originally scheduled to be heard
17 by the Court on June 17th and adjourned by the debtors to June
18 24th which was last Wednesday. We had a hearing before Your
19 Honor and adjourned the matter to 2 p.m. this afternoon.

20 Your Honor gave some very helpful comments on the
21 record of the hearing and one of the suggestions that Your
22 Honor made, all of the parties, I think, took up which was the
23 formation of an ad hoc group of creditors to gather, discuss
24 their issues with the proposed bar date motion and interface
25 with the debtors. And in fact, immediately following the

1 conclusion of the hearing, a group was formed. The group met,
2 I believe, on June 25th on their own and interacted at some
3 point during that meeting with the advisors to the creditors'
4 committee.

5 The very next day, commencing at 10 a.m., the debtors
6 hosted the ad hoc group and the creditors' committee and the
7 offices of the debtors' counsel. There were over thirty
8 parties represented at that meeting by over forty counsel, many
9 of which are here today. I think the meeting can be accurately
10 described as a free, open, honest dialogue as to the burdens to
11 the various parties as a result of the proposed procedures as
12 well as the benefits to the estate from the proposed
13 procedures. And in an exchange that lasted almost till 10:00
14 that night with all the parties essentially still in the room,
15 the parties were able to conclude an agreement as to the form
16 of a bar date order, the form of a questionnaire, derivative
17 questionnaire, and the form of a guarantee questionnaire that,
18 in substance, no one in the room found objectionable. I
19 described it in a pleading this morning as unanimity but, of
20 course, it was subject to final documentation and that final
21 documentation subject to everyone in the room confirming with
22 their clients that they had appropriate sign off.

23 We did file a statement this morning and the
24 statement was followed by an amended statement to clarify that
25 for those in the room, there was unanimity as to the proposed

1 bar date order, the proposed procedures, but that it did not,
2 by any means, resolve all of the objections. And the debtors,
3 in fact, promised those in the room that identities would not
4 be disclosed so that there could be a fair dialogue among
5 everybody and that everybody would reserve rights.

6 As we stand here today, I think there is one party
7 who has advised us they would like to speak to a narrow issue
8 on the derivative procedures. And aside from that, there are
9 two remaining issues but issues that were not taken up in any
10 way by the ad hoc group, those relating to the European medium
11 term notes and, I think, another issue related to certain SIVs
12 and objections or claims they may have -- SPVs. I'm sorry,
13 they're not SIVs.

14 We did, with our statement, file a blackline of the
15 entire package, the order and the questionnaires comparing what
16 was distributed in court on Wednesday with where we are today.
17 And that blackline was handed out as well to everyone in the
18 courtroom at the commencement of this hearing. Not sure if
19 Your Honor received a copy. We did have a set delivered to
20 chambers. I do have additional copies if Your Honor would like
21 a copy of the blackline bar date order.

22 THE COURT: I've looked at a variety of papers in
23 preparation for today's hearing so I'm absolutely clear that
24 we're talking about the same blackline. It probably would be
25 just as well if you handed one up.

1 MR. WAISMAN: If I can approach?

2 THE COURT: Please. Thanks.

3 MR. WAISMAN: Your Honor, rather than take everyone
4 through another boring monologue of mine as I did on Wednesday,
5 I can highlight some of the more substantive modifications made
6 and then address a few other points on the record before we
7 move to any open issues. And what's embodied in what Your
8 Honor holds again is the product of the meeting on Friday and
9 comments, additional clarifying and some substantive comments,
10 that were received by the debtors and largely accepted over
11 this past Saturday, Sunday and this morning as well.

12 The revisions to the bar date include a bar date for
13 proofs of claim of September 22nd, 2009. In a departure from
14 the last iteration, derivative questionnaires and guarantee
15 questionnaires are now due on the same day and that date is
16 October 22nd, 2009. The mailing of notices of the bar date and
17 the proofs of claim will occur no later than July 8th. In
18 fact, the debtors believe they may be able to effect the
19 mailing earlier, but given the holiday weekend that we are now
20 running up against, we needed to leave a little bit additional
21 time for the mailing to occur.

22 All in, Your Honor, that's approximately just under
23 eighty days from mailing to bar date and 106 days to
24 questionnaire deadline.

25 The significant changes, the most significant

1 changes, were made, obviously, to the derivative questionnaire.
2 I'm not sure it's a good exercise again for me to go line by
3 line through the questionnaire. But the blackline does
4 highlight the changes. And, again, this reflects the work of
5 the ad hoc group, the debtors and the creditors' committee
6 which played an integral part both before, during and after the
7 meeting on Friday to ensure that there was a consensus among
8 the parties and served as a good mediator.

9 THE COURT: May I just ask a question about the ad
10 hoc committee? You commented earlier that there was, in
11 effect, a no name's basis for certain aspects of this process
12 to preserve the independence of client positions. Are the
13 members of the ad hoc committee a secret or can I know them?
14 And are they, in fact, reasonably representative of the
15 interest being generally represented in the room?

16 MR. WAISMAN: Your Honor, good question. First, I
17 will note that I learned the hard way at the meeting we had
18 that they do not like to be called a committee. They are an ad
19 hoc group.

20 THE COURT: Of course. We're in 2019 land.

21 MR. WAISMAN: I did make a representation just so no
22 one would feel like their rights would be prejudiced by
23 participating in the meeting and contributing. And everyone
24 really did contribute and I think everyone was somewhat
25 inspired by what we were able to achieve that day. I did

1 promise those groups that I would not disclose the client
2 representations. They are here in the room.

3 THE COURT: Okay.

4 MR. WAISMAN: It is the debtors' belief that it was a
5 fair cross-section including derivative claimants and guarantee
6 claimants. But I would leave it to those members to step up
7 and identify themselves if they'd like to do so or comfortable
8 doing so and if the Court would --

9 THE COURT: I'm not trying to force anybody to
10 disclose what they would prefer to keep private at this moment.
11 I'm simply trying to understand the composition of the
12 committee, the number of members and to get some assurance that
13 at least in the view of those who have been part of the process
14 that it's a fairly representative group.

15 MR. WAISMAN: Again, I will say that over thirty
16 institutions were represented in the room, a few on the phone
17 and these were all groups that had objected initially to the
18 bar date. They were represented by over forty counsel. And we
19 do believe them to be fairly representative. I'll also say
20 that since we circulated the blacklines on Saturday and subject
21 to revisions, we have heard back from many of them confirming
22 that their clients had signed off on the form. And I do think
23 that I can fairly represent that it is the recommendation of
24 that group. But I am concerned by my assurances to the group
25 that -- I personally would not disclose identities.

1 I'm happy to take a break if others want to --

2 THE COURT: No. That's okay. I'm just recognizing
3 how unusual this is because in, I guess, basic bankruptcy
4 courses, everybody knows that bankruptcy is a fish bowl and
5 that it's supposed to be incredibly transparent. And the theme
6 of this bankruptcy case starting in the second week of the
7 case, not the first, was the transparency was the order of the
8 day. So this is an opaque ad hoc group, something which I
9 think is not necessarily in the best interest of what I believe
10 to be an important theme of this bankruptcy case.

11 So at some point during the afternoon hearing, I'd
12 like the parties who have been part of this process to take
13 ownership of it.

14 MR. WAISMAN: Understood, Your Honor. They will
15 certainly have an opportunity in a moment to step up. I can
16 also canvass them individually and get their consent. But we
17 did think it was an important component to being able to have a
18 fair open exchange on Friday. And I think the results reflect
19 that hopefully it helped the process along.

20 THE COURT: I'm confident that it did and I'm very
21 pleased that this informal process of meeting and conferring
22 and reaching certain accommodations has produced something
23 which may reflect a consensus position.

24 I'm not making too much of this point other than to
25 say that I am somewhat troubled by the fact that it's not, at

1 this point, public and I think that it should be, in part,
2 because to the extent that we are going to reach a conclusion
3 today that produces an order, I'd like very much to have a
4 record that's available to parties who are not represented so
5 that there's a clear understanding as to how we got here. But
6 let's proceed.

7 MR. WAISMAN: Okay. And the only other point I can
8 make is after canvassing the group and comparing them to our
9 records, we do believe that over fifty percent of all
10 derivative transactions -- over fifty percent -- were
11 represented in that room. So that is a significant group.

12 With that, unless Your Honor has any questions as to
13 the form of order and any particular modifications made to the
14 order, I did also represent that I would make a few quick
15 statements on the record, the first one being that -- obviously
16 a big component of the proposed procedures is a website where
17 information will be submitted and downloaded. Recognizing that
18 the website is not up and running at this very moment, we
19 agreed with the members of the ad hoc group that we would form,
20 essentially, a focus group with a few representatives that
21 would, prior to unveiling the website, would work with the
22 debtors and their professionals to kind of preview the website,
23 raise any questions and really make sure that it is as easy and
24 as functional to use as is possible. And we hope to do that
25 later this week beginning of next week.

1 There's also been a request that we make clear on the
2 record that nothing in the bar date order is meant to affect
3 the safe harbor provisions of the Bankruptcy Code and, of
4 course, that is not the debtors' intention.

5 There have been a number of questions as to who can
6 file a proof of claim and the questionnaires. And as the bar
7 date order makes clear and any bar date order makes clear and
8 the law is clear, it is a holder of a claim or their authorized
9 representative. There is nothing in any of those documents
10 that modifies the law on that point.

11 We do have a continuing request for, essentially,
12 cure periods and notices. We addressed that briefly at the
13 hearing last Wednesday. The provision that Your Honor referred
14 to as perhaps a fool's errand has been struck. But we will say
15 on the record that to the extent people do make a good faith
16 effort to comply, no one is seeking to play a game of gotcha
17 and call them out for not submitting a specific document. And
18 there will be a cooperative good faith process where the
19 debtors endeavor to contact people that attempted in good faith
20 to comply to resolve issues before they're brought to the
21 Court's attention.

22 With that, I think we've, subject to confirmation,
23 largely resolved all the objections to the bar date order. I
24 note there is one party that would like to address the Court on
25 a narrow issue. And perhaps we should do that first and then

1 we can turn to the two remaining issues being the SPV and the
2 EMTN issue. But happy to proceed how ever Your Honor would
3 like.

4 THE COURT: Let's deal with the narrow issue.

5 MR. DORCHAK: Good afternoon, Your Honor. Joshua
6 Dorchak, Bingham McCutchen, on behalf of Deutsche Bank AG.
7 Deutsche Bank filed a fairly lengthy objection to the
8 procedures motion, Your Honor, which has now shrunk down to a
9 very limited objection on two points neither of which are part
10 of a philosophical difference of opinion. And, in fact,
11 Deutsche Bank was a member of the ad hoc committee and did
12 participate over the last few days and is pleased with the
13 progress that was made.

14 These are practical points, which is not to discount
15 them, practical but important points that didn't get resolved
16 in the course of those discussions. And the two background
17 points that you -- I'd like to tell you are, number one, that
18 Deutsche Bank is a counterparty to various debtors on
19 derivatives contracts with one hundred thousand or underlying
20 trades. And that means that Deutsche Bank is especially
21 sensitive to the burdens of responding to the procedures.

22 The second important fact is that Deutsche Bank has
23 been negotiating with the debtors post-petition voluntarily to
24 resolve all of the open derivatives issues. And in the course
25 of doing so has provided a great deal of information. In fact,

1 I believe they've provided everything that's covered by 4A, B,
2 C and D on the derivatives questionnaire already and that
3 information's been worked with, assessed and, in many cases,
4 signed off on with agreement on both sides.

5 With that background, Your Honor, the two things that
6 the proposed orders don't do that Deutsche Bank would like to
7 have them do would be, number one, relieve a counterparty who
8 has already provided information to the debtors from providing
9 it again. Number two, to permit a counterparty to provide
10 information to the debtors on DVD as opposed to uploading it to
11 the proposed website, which, as Mr. Waisman just said, no one
12 has yet seen in operation.

13 The last of the points, Your Honor, my client,
14 Deutsche Bank, has a very legitimate concern that they're going
15 to have to put one or more employees to work all day all summer
16 inputting details about one hundred thousand trades, one by
17 one, uploading onto a website even though the debtors already
18 have this information and have already signed off on it in many
19 cases. These are two practical forms of relief that Deutsche
20 Bank would like to seek in part because there are so many
21 trades at issue. And we'd respectfully request that Your Honor
22 consider those proposed modifications.

23 THE COURT: I will consider them.

24 MR. DORCHAK: Thank you.

25 MR. PEDONE: Your Honor, Richard Pedone with Nixon

1 Peabody on behalf of Deutsche Bank as indenture trustee and
2 supplemental interest trust.

3 THE COURT: This is a different arm of Deutsche Bank?

4 MR. PEDONE: It is, Your Honor, and this form, also
5 through Nixon Peabody, filed an objection to the motion. And
6 we, too, participated in the ad hoc committee and appreciate
7 the progress that was made.

8 We have one narrow issue that is unresolved and that
9 is as trustee, Deutsche may be forced following and event of
10 default or otherwise to file proofs of claim or a manager who
11 has primary responsibility would have initially terminated or
12 taken other action. It may be beyond the trustee's ability to
13 actually get possession of the documents and all of the
14 information needed to comply with the procedures. We will
15 undertake a good faith effort to put all the information in but
16 there may be circumstances where it simply proves impossible to
17 do at this time. And so, we had hoped that there would be a
18 form of good faith compliance exception of the procedures which
19 was removed.

20 We've given the debtors some specific language to try
21 to resolve the issue for trustees and our situation and that
22 was unacceptable. So we'd, on that point, continue our
23 objection, Your Honor. Thank you.

24 THE COURT: Okay. Well, it was this pen that removed
25 it.

1 MR. PEDONE: I understand. Thank you.

2 THE COURT: But let me be clear as to what I was
3 concerned about and it may be that there's a way around your
4 concern. I was conscious of the fact that we were creating in
5 a relatively abbreviated period of time a model that is
6 intended to be a somewhat more elaborate version of proof of
7 claim practice as it applies to derivatives and guarantee
8 claims in the Lehman case. The good cause for doing that being
9 that given the complexity of the transactions and the need to
10 address a great volume of transactions of similar sorts that
11 something as loose as good faith compliance was an exception
12 that would swallow the rule. That was my concern. That
13 remains my concern.

14 It was my belief, and I said this fairly emphatically
15 last week, that we needed to come up with a pretty much no-
16 exceptions design that would apply to everybody in which
17 everybody would get clear and conspicuous notice of the
18 obligation to perform and would be acting at their peril should
19 they fail to perform fully and faithfully. That having been
20 said, if there is a legitimate provable problem that a party is
21 having while engaged in a good faith effort to comply, I have a
22 feeling that parties will be able to stipulate to some relief
23 geared to the particular circumstance. But I'm not going to
24 design that now nor do I think it appropriate to design it now.

25 The premise on which this is based is the history

1 that we've had in this case for the last, approximately, nine
2 months in which we have been dealing with any number of
3 unprecedented commercial transactions that I believe have never
4 before been presented in a bankruptcy court at least to this
5 level of volume and sophistication. And somehow, counsel have
6 been able to work out procedures, whether related to open
7 trades or, in this instance, as it relates to proofs of claim
8 for derivatives. And I think that it's going to be possible to
9 deal with particular problems all of which I can't presently
10 foresee as they arise. But meanwhile, the world should know
11 that there's a potential cliff that they're going to walk over
12 on September 22nd and again on October 22nd. And it's going to
13 be a long way down.

14 MR. PEDONE: Your Honor, I fully understand the
15 Court's position. We will work with the debtor as best we can.
16 But in light of the fact that see potential impossibilities, I
17 do need to continue with that limited part of our objection to
18 the procedures.

19 THE COURT: That's fine.

20 MR. PEDONE: Thank you.

21 THE COURT: And my philosophy here is that there
22 should be flexibility to deal with the particular problems of
23 someone that's trying to comply in good faith.

24 MR. PEDONE: Thank you.

25 MR. THAU: Your Honor, Andrew Thau of Skadden Arps on

1 behalf of Silver Point Capital Fund and Silver Point Capital
2 Offshore Fund. We just wanted to confirm a couple clarifying
3 comments we had with debtors' counsel that the beneficial
4 holders of the Euro Medium Term Notes can file proofs of claim
5 and that nothing in the bar date order is intended to limit the
6 ability of assignees to assert assigned claims beyond
7 Bankruptcy Code and the bankruptcy rules limitations.

8 MR. WAISMAN: Your Honor, Shai Waisman again. I
9 think three points to address very quickly in maybe reverse
10 order. As to Silver Points' statement, I believe both of the
11 statements comply with the Bankruptcy Code, the rules and the
12 law. And the bar date order does not change parties' rights to
13 file claims.

14 Two Deutsche Bank issues. Deutsche Bank -- I'm
15 sorry. Attorney for Silver Point would like to say something
16 further on that point.

17 MR. THAU: At the request of debtors' counsel, I just
18 wanted to confirm that Silver Point participated in the
19 meetings on Thursday and Friday and it was a productive
20 process.

21 THE COURT: Thank you. We're getting creeping
22 transparency.

23 MR. WAISMAN: I'm happy to let others step up and
24 interrupt me for the same statement.

25 Deutsche Bank first issued -- Your Honor, the issue

1 as to information provided during the course of these cases in
2 all sorts of conversations, discussions with the debtors was
3 the subject of discussion on Friday. I think the burdens to
4 both sides have to be weighed and they have been considered by
5 the debtors. The derivative procedures substantially reduce
6 the burdens on all of the counterparties in submitting
7 information. But the benefit of having the website in a
8 centralized process for the submission of all the information
9 and a centralized location and formatting of all the
10 information will help the claims process and the forward
11 progression of these cases immeasurably. And that has to be
12 weighed against if -- and assuming with our argument that it's
13 correct, and I'm not sure that it is, but that somebody has to
14 sit and plug in all the information, it would be no different
15 than the burden on the debtors if the debtors were to accept
16 paper copies and the debtors would need to input all the
17 information to create this centralized catalogue of these
18 highly complex claims.

19 So on balance, and there's no question there are
20 burdens, but on balance, I think we strike the fair balance in
21 the proposed order. And the requirement to submit the
22 information on the website, given the numerous objections, I'm
23 not sure is being pressed because of the reduced burdens that
24 the new procedures provide for and the submission of the
25 information is an important one for the debtors on the website

1 is an important one for the debtors.

2 And as to the second point raised by Deutsche Bank,
3 Your Honor is absolutely right. To put language in the order
4 would be the exception to swallow the rule here. Of course, my
5 representation last week and again today is that we will work
6 in good faith with any party that has particularized issues and
7 problems and fashion a way to make this process as smooth as
8 possible and not require the Court's intervention. And I think
9 that should suffice.

10 I also have authorization to represent that Calyon
11 and Pimco participated in Friday's meeting the result of which
12 is the modified procedures. I believe I also have Barclays
13 authorization to represent that they participated as well.

14 THE COURT: Good. One point raised by counsel for
15 Deutsche Bank that does concern me a little bit is this. I
16 gather that there are parties in different stages of
17 information sharing. And based upon one of the declarations
18 that I read, I believe that there are only 500 trades in total
19 that have gotten to the point of being fully reconciled at this
20 juncture which is a very small percentage of the total. I
21 haven't done the math but it's point zero something.

22 And to the extent that Deutsche Bank has been
23 exceptionally forthcoming -- I don't know if that's true or
24 not. I'm just hearing counsel say we gave at the office, in
25 effect, and provided a lot of information and have been working

1 with great diligence to help provide information which is of
2 the exact same sort as that which is requested by the
3 questionnaire, it raises a question of duplication of effort
4 which has been brought up. Is it the debtors' position that
5 even if duplication of effort is what's required that it's
6 appropriate here so that all parties to derivative trades are,
7 in effect, in the same place in terms of the work they need to
8 do and in terms of the website where the work product is to
9 ultimately reside?

10 MR. WAISMAN: Your Honor, that is the debtors'
11 position in the process. And I'm not -- I'm far from an expert
12 in the process. But in the process, if you properly terminated
13 a derivative contract, you submitted some information. And the
14 spectrum from terminating and submitting some to others who
15 either in cooperation or on their own submitted additional
16 information while an issue in terms of duplication, does not in
17 the debtors' estimation resolve the fact that this procedure is
18 the only way for the debtors to actually have a firm deadline
19 where all the information is collected in a centralized
20 location where it's not in one party's hands and someone else's
21 hands or the debtors aren't even sure where it is but somebody
22 says they provided it -- there are all sorts of gray as to what
23 may have been provided and what may not have been provided.
24 And just like any other bar date in any other case where a
25 party may have sent in a request for payment with a copy of a

1 contract, when the bar date comes, people do need to submit
2 that claim again. And necessarily, there is duplication in the
3 process. There is burden in the process. There's no argument
4 with that but what we've tried to do here is create a process
5 that minimizes that effort. And one thing I should point that
6 in addition to having sort of a focus group just sit and
7 observe the website, one of the things we will undertake is an
8 effort to make that website easy to manipulate and populate as
9 is possible so that, we hope, no one has to spend the summer
10 typing in each and every data field, that perhaps there is
11 information, tables that can be downloaded onto systems that
12 will automatically populate information and that can then be
13 uploaded. We promised the counterparties that we will do our
14 best to make sure that it will be as easy to function and
15 populate as is possible. But will there be duplication? There
16 always is duplication. We've tried to minimize the burden
17 though and the balance here we think is fair and reasonable.

18 THE COURT: Okay. As to the --

19 MR. DORCHAK: If -- could --

20 THE COURT: Oh, do you wish to say more on this?

21 MR. DORCHAK: Very quickly, Your Honor. You'll like
22 the second one better than the first one. The first one is to
23 follow up on that. Deutsche Bank didn't simply throw some
24 documents at these debtors. They've been working for a long
25 time now. They provided all the specific trade specific

1 information with valuations for a hundred thousand trades on
2 DVD. If the debtors' counsel consulted with the debtors they
3 would be able to confirm that. So we're not talking about
4 Deutsche Bank trying to get away with throwing some documents
5 at the debtors and saying they're special. Just for the
6 record.

7 The second thing, I don't -- well, sorry. Another
8 half of the first thing, the DVD submissions have been working
9 fine in the course of the negotiations so far and I don't
10 understand the need to have everything uploaded as opposed to
11 uploaded in DVD. Deutsche Bank would be happy to work with the
12 debtors to ensure that the website is user friendly. So we're
13 not -- we're happy to cooperate. But we're looking at a
14 wishful thinking situation on the user friendly nature of the
15 website.

16 And the second thing, Your Honor, I can confirm that
17 my other clients, UBS AG and their affiliates, State Street
18 Bank and Trust Company and Putnam Investments LLC participated
19 in the ad hoc group negotiations.

20 THE COURT: Thank you.

21 MR. DORCHAK: Thank you.

22 THE COURT: As to this narrow continuing objection,
23 we're getting in a zone that's really not legal; it's
24 practical. And for reasons similar to the comments made
25 earlier in connection with stipulations to accommodate good

1 faith compliance on an ad hoc basis, it seems to me that we are
2 dealing with Deutsche Bank's risks. Deutsche Bank participated
3 in the process, is participating in this hearing and knows that
4 the philosophy which underlies the development of a uniform set
5 of procedures to apply to the filing and proving of derivative
6 claims is something that really is not intended to have a lot
7 of exceptions. Indeed, it's intended to be a no-exception
8 approach to dealing with proofs of claim.

9 To the extent that Deutsche Bank may be able, through
10 persuasion, to convince debtors' counsel or Alvarez & Marsal or
11 whoever they may be dealing with that the DVDs previously
12 submitted contain information that can be easily transferred to
13 the website and that it's best done by Lehman personnel because
14 they have control of the information already and some
15 appropriate stipulation to that effect is developed. I'm
16 indifferent as to that.

17 I do think, however, that it is really inappropriate
18 for one counterparty, regardless of the number of trades
19 involved, to be taking the position that substantial compliance
20 means, in effect, exoneration from having to be bound by the
21 very same procedures that apply to everybody else.

22 So at least in terms of my reaction to this argument,
23 it is that this request for a narrow special exception is
24 denied with the same basic overlay as applied to my earlier
25 remarks, namely, that we're dealing with extraordinarily

1 sophisticated institutions that are dealing in a market that is
2 well known to them although, generally, unknown to most human
3 beings. And to the extent that there is a way to demonstrate
4 that the functional equivalent of developing an information
5 base to allow for ready reconciliation can be accomplished by
6 means of data previously submitted or any other form of data
7 transfer previously submitted and the debtors find that
8 acceptable, I suppose that they can, if they choose to,
9 stipulate away the protections of the order which I'm about to
10 enter today.

11 But in terms of the integrity of the order and the
12 proof of claim process, I consider it unwise to cobble together
13 exceptions now. And I refuse to do it.

14 MR. WAISMAN: Your Honor, I think with those issues
15 resolved, we are down to two particular issues proceeding with
16 a bar date, the first one relating to the EMTN program and the
17 process by which claims will be asserted on account of the EMTN
18 program; and secondly, the SPV issue, which I'm told Your Honor
19 is familiar with, and others will address.

20 On EMTN, my partner, Lori Fife would like to address
21 the Court as to the EMTN and SPV.

22 THE COURT: I don't think there's ever been a case in
23 the history of the world that has had this many terms that are
24 just initials. It's incredible.

25 MR. WAISMAN: I agree.

1 MR. FLECK: Good afternoon, Your Honor. Evan Fleck
2 of Milbank Tweed Hadley & McCloy. If I may, Your Honor, we
3 would like to advise the Court with respect to the committee's
4 thinking and ultimate decision to support the derivative
5 questionnaire aspect. And I guess that takes us one step back.
6 But we did want to provide that information to the Court.

7 THE COURT: I assume the committee also participated
8 in the marathon sessions at Weil Gotshal last week.

9 MR. FLECK: Yes, Your Honor. The committee's
10 representatives participated, the counsel to the committee as
11 well as the financial advisors.

12 The concept of the derivative questionnaire that
13 would go along with the proof of claim procedures was shared
14 with the committee very early on in the process. And as was
15 reflected in the debtors' pleadings in connection with the bar
16 date, the committee's advisors worked closely with the debtors
17 to help to develop and comment on those procedures. As the
18 Court is aware, there is a derivative subcommittee of the
19 committee that directly considers and consents to derivative
20 transaction settlements with respect to both claims and in the
21 money positions. That's pursuant to this Court's order that
22 was entered in mid-December.

23 The derivative subcommittee, in particular, spent a
24 lot of time reviewing the procedures that were set forth in the
25 original draft and the iterations thereafter of the derivative

1 questionnaire and asked very probing questions of the
2 committee's advisors with respect to what was necessary and
3 appropriate in the context of these cases. And as we indicated
4 at the hearing last week, while the committee was very far
5 along in the process and recognized the need for special
6 procedures for derivatives in these cases, we weren't quite
7 there yet.

8 And I'm very pleased to report to the Court that
9 through the process that took place on -- starting on Thursday
10 when the committee's advisors met with the ad hoc group
11 derivative counterparties by phone through the process on
12 Friday and then over the weekend when the committee met
13 yesterday in an extended session to consider these procedures.
14 The committee is fully in support of the revised version of the
15 procedures because it's comfortable that it represents the
16 appropriate balancing of what is needed in order to move
17 through the derivative book in an appropriate fashion and also
18 in consideration of the burdens on the parties that are
19 directly affected by the procedures.

20 And I think -- would also like to comment that the
21 process that took place on Friday, in particular, was an
22 extremely healthy process. We'd like to thank the Court for
23 the suggestion of it. The parties absolutely worked in good
24 faith and in honest dialogue with respect to what was needed,
25 what was possible and appropriate for these cases. And in

1 light of that process, and in light of the result of that
2 process, which is before the Court for approval, as I
3 indicated, the committee is in full support of the revised
4 procedures with respect to derivative contracts.

5 THE COURT: Okay. Thank you.

6 MR. SHERRILL (TELEPHONICALLY): Good evening, Your
7 Honor. May I be heard?

8 THE COURT: You better identify yourself.

9 MR. SHERRILL: Of course. This is Mark Sherrill of
10 Sutherland Asbill & Brennan. I represent US AgBank FCB and
11 Aviva entities. Before we move on to the two narrower issues,
12 I'd like to voice an objection or a couple of objections on
13 these matters in a more general sense. Neither US AgBank nor
14 Aviva participated in the ad hoc group. And I would disagree
15 with counsel's statement that all objections have been
16 resolved. I would prefer to have our objection ruled upon.

17 Our concerns are based primarily on the imbalance of
18 information that will be shared under these procedures. I'm
19 not aware of anything that allows for the claimants to gain
20 access to the debtors' data which, if the concern voiced by the
21 Court is reconciliation of claims, it would seem that that
22 would be the most efficient process as far as them being a
23 universal sharing mechanism.

24 Under the procedures, as I understand them, there
25 would be an ability for the debtors to review data before

1 claims objections have been filed and propose their claim in
2 the amount that's approximately equal to that on the debtors'
3 books and records but where the methodology is different
4 somehow. In ordinary circumstances, no claim objection would
5 be, too. But here, because of the amount of data that's being
6 shared and other information, that might lead to a claim
7 objection. Similarly, after a claim objection is filed, the
8 debtors will have full understanding of the strengths and
9 weaknesses of the claimant's case while the claimant has no
10 understanding of the debtors. Yet, there would be possible
11 discovery under Rule 2004 but I suspect that that would be
12 heavily opposed.

13 From a broader view, the result is litigation
14 advantages for the debtors that, in effect, lead to the trading
15 counterparties that were in the money, those that made good
16 trades with Lehman, to settle in a discount because of the
17 taxable advantage that the debtors will have and ultimately
18 subsidize the other unsecured creditors in this case.

19 I would finally add that I think just about everyone
20 recognizes that this is extraordinary relief that the debtors
21 seek. I believe the Court used the same word last week. And I
22 don't see that the debtors have established an extraordinary
23 basis for that relief sought. The basis for the relief boils
24 down to the fact that there are a lot of derivatives contracts
25 that are very complex. Obviously, that's true, but to some

1 extent, it must be the case that the debtors assume that risk
2 by entering into this type of business. The debtors have an
3 army of professionals that can work to liquidate these
4 derivatives contracts where the creditors and the claimants do
5 not have such resources.

6 For those reasons, US AgBank and Aviva would oppose
7 the entry of any party that requires the completion of
8 questionnaires. We feel that there -- may result in an
9 impermissible shifting of burdens. And to the extent
10 modifications have been raised in the questionnaires in this
11 stage while the result of admirable efforts are ultimately
12 irrelevant from a legal perspective. Thank you.

13 THE COURT: I see someone interested in speaking.

14 MR. NOVIKOFF: Not to that objection. It's a related
15 matter, Your Honor.

16 THE COURT: Why don't you come forward? Mr.
17 Novikoff, how are you?

18 MR. NOVIKOFF: I'm very well, Your Honor. Harold
19 Novikoff, Wachtell Lipton Rosen & Katz, on behalf of JPMorgan
20 Chase Bank. Your Honor, we actually appreciate the efforts of
21 the ad hoc group and congratulate them on getting a much better
22 product than before that started. However, we were not a part
23 of that group. That is because as is referred to in the order,
24 we did negotiate in advance with the debtor a stipulation which
25 has been submitted to Your Honor, I believe, before the last

1 hearing on this matter to deal with the fact that JPMorgan has
2 in the area of 75,000 derivatives trades with various of the
3 Lehman debtors as well as other Lehman affiliates. We have
4 made a very high priority trying to get those resolved with the
5 debtor, have given a tremendous amount of information,
6 including electronic sharing of information so that the
7 databases for that can be filled and that is -- they've been
8 almost fully reconciled at this point. And we've had our
9 traders meeting with their team who is reconciling and looking
10 at valuations to go forward with that process.

11 We have entered into a stipulation with the debtor
12 which has been given to Your Honor, the deal with the mass of
13 information that we've given to allow that to be used and to
14 continue sharing information in that way. And we intend to
15 continue working with the debtor to try to reconcile and
16 hopefully agree on the amount of the claims as soon as we
17 reasonably can.

18 I would ask Your Honor to sign on to that stipulation
19 contemporaneously with the bar date order if and when you enter
20 it.

21 THE COURT: I'm familiar with the stipulation and
22 looked at it last week and decided to put it to one side until
23 after we concluded other matters relating to the derivatives
24 proof of claim procedures. Not that I had any hesitation in
25 approving that separate stipulation but it seemed to me that it

1 was appropriate to have it determined at the more or less
2 contemporaneous moment. That's the reason for the delay.

3 MR. NOVIKOFF: We agree with that, Your Honor. It is
4 something that should entry of the order --

5 THE COURT: I'm glad I made the right call on that
6 one at least.

7 MR. NOVIKOFF: Yeah. So certainly, we'd make sure
8 they're consistent with each other but we wanted to draw your
9 attention to the fact and it is something that we are looking
10 for.

11 THE COURT: Okay. Thank you.

12 MR. NOVIKOFF: Thank you, Your Honor.

13 MR. ELLENBERG: Can I come up?

14 THE COURT: Yes.

15 MR. ELLENBERG: Your Honor, Mark Ellenberg,
16 Cadwalader Wickersham & Taft on behalf of Morgan Stanley.
17 Perhaps, Your Honor, and particularly in light of the objection
18 that was voiced, it might be a good time to demystify somewhat
19 the ad hoc group process that went on here. Let me try to do
20 that.

21 Shortly after the hearing concluded last week, a
22 number of people -- a number of objectors gathered in the
23 courtroom and agreed to have a meeting the following morning at
24 Cadwalader. We attempted to give very wide notice of that
25 meeting. Anyone who expressed an interested in coming was

1 permitted to come. Nobody was intentionally excluded from that
2 group. We even invited Mr. Novikoff. And --

3 THE COURT: He declined because he already had a
4 stipulation.

5 MR. ELLENBERG: Yes, he did, Your Honor. So we
6 intended to get as wide a cross-section of objectors as we
7 could. And we did meet for most of the day at Cadwalader and
8 then the following day at Weil. And amazingly, given the
9 number of parties that were involved, we did reach an end
10 product that everyone could live with.

11 I think, Your Honor, the confidentiality concerns may
12 be two-fold. The first is that, as Your Honor noted at the
13 hearing last week, this ad hoc group is somewhat without
14 portfolio. We don't have fiduciary duties to anyone beyond our
15 group and, indeed, we don't even have fiduciary duties to each
16 other. And so, we didn't want any patina of committeeness to
17 be lent to the process, I believe.

18 And the other thing is that I'm not sure that any
19 member of the group wanted to be thought of as endorsing the
20 end product here. We're not happy with the questionnaire. As
21 the Deutsche Bank objection just made clear, there's things
22 about it that various members of the group aren't completely
23 happy with. But we do think it got to a point where it was no
24 longer worthy of continued objections. And we appreciate the
25 flexibility that the debtor demonstrated in getting us to that

1 point and we also tried to be flexible. And at the end of the
2 day, as Your Honor observed, this was largely a pragmatic
3 exercise and we got to what we thought was a pragmatically
4 workable solution. And so, that's where we ended up. And if
5 other members want to come forward and say they participated,
6 that's great, but I think it is clearly fair to say that it was
7 a very wide cross-section of the trading community. It was
8 dealers, it was non-dealers. It was domestic, it was foreign.
9 And as I believe the debtors said, clearly more than fifty
10 percent of the trades were represented in that group. Thank
11 you.

12 THE COURT: Thank you very much. That's helpful.
13 I'd also like to make what I hope is a helpful comment. When I
14 proposed last week that a group of representatives of
15 counterparties to derivative contracts organize, it was as much
16 a wish as it was a direction. It wasn't really a direction at
17 all. It was my hope that the process that when involved in
18 could be a largely consensual one in which the positions of
19 counterparties could be openly expressed to the debtors in an
20 environment of give and take. And based upon the reports that
21 have been made this afternoon, it seems that's exactly what
22 occurred. And I'm gratified that happened.

23 However, I don't assume that any party that
24 participated in the process assumed any duties to any third
25 party. I recognize that the process was completely informal.

1 And to the extent that it turned out to be representative,
2 that's a happy accident. This was a coalition of the willing.
3 It wasn't anything more than that. And to the extent that
4 there resulted from the process a set of procedures that
5 counterparties, at least those represented, could endorse, that
6 gives the Court added comfort that third parties who weren't in
7 the room should be able to deal with those very same procedures
8 in a businesslike way.

9 So I'm making that comment to make it clear that I
10 don't assume that any member of the committee has assumed any
11 responsibility to anyone.

12 MR. WAISMAN: Your Honor, Shai Waisman again.
13 Perhaps for just a quick moment addressing the objection raised
14 by -- on the phone by US AgBank and Aviva, Your Honor, this
15 point was actually addressed in our original reply to all of
16 the objections. The objector here would actually have us
17 believe that terminating and ISDA outside of court, a
18 bankruptcy process requires the free exchange of a great deal
19 of information about the trades. But once a company falls into
20 Chapter 11, the termination of the ISDA with the overlay of
21 bankruptcy means that all you need is a proof of claim with no
22 supporting documentation and at that point, the onus is on the
23 debtor to actually initiate litigation to get the information
24 that it would otherwise be able to get without litigation.
25 That, of course, is not the law and certainly not appropriate.

1 In this Chapter 11 case, we have proposed these
2 procedures which have been now largely endorsed. And far from
3 the suggestion of counsel on the phone, these procedures would
4 enable the debtors in a streamlined fashion obtain much of the
5 information required by ISDA and, indeed, a little bit more
6 than ISDA requires which our friends at ISDA, in their own
7 brief, recognized is appropriate in a Chapter 11 case.

8 For those reasons and everything else that's on the
9 record today, I would ask the Court to overrule the objection.

10 THE COURT: Let me inquire if there's anyone else I
11 haven't heard from, either on the telephone line or in the
12 courtroom, that has an objection to press at this time.

13 UNIDENTIFIED SPEAKER: Your Honor, there's a whole
14 EMTN objection which has been unresolved and has to be heard.

15 THE COURT: That's a separate

16 UNIDENTIFIED SPEAKER: Right.

17 THE COURT: That's a separate matter. And I'll be
18 getting to EMTN shortly -- next I'll be getting to it. I just
19 wanted to make sure that in terms of the more general
20 objections that have just been articulated over the telephone
21 by counsel for US AgBank and Aviva which, in effect, reopened
22 the category of broad objections that have been largely closed
23 as a result of the amendments to the proposed order and
24 procedures. I just want to see if there are any other
25 objectors in the same category to be heard from.

1 MR. VENDITTO: Your Honor, Michael Venditto from Reed
2 Smith on behalf of Bank of New York Corporate Trustee Services.
3 We filed an objection with respect to both the Euro mid-term
4 notes as well as the derivative procedure process. Our
5 objection is solely related to a particular synthetic portfolio
6 program known as the Dante program which, unfortunately, Your
7 Honor is probably more familiar with than you would like to be.
8 And it has to do at this point, since there's been substantial
9 modifications made to the derivative procedure with respect to
10 the timing and the bifurcation or propriety of having two
11 separate bar dates, both the general proof of claim filing bar
12 date which is proposed for a date in September as well as a
13 later bar date for the filing of the additional materials which
14 we believe, particularly with respect to the Dante program,
15 presents particular hurdles. And I believe Ms. Fife has
16 indicated that that objection will be discussed later in the
17 hearing.

18 MS. FIFE: Can do it now.

19 THE COURT: I don't know when it's going to be
20 discussed but you're discussing it now. Can we just deal with
21 it now?

22 MR. VENDITTO: Certainly, Your Honor. As Your Honor
23 is aware, there is an entire program which has been
24 euphemistically referred to as Dante in which Bank of New York
25 is functioning as trustee under deeds of trust that were issued

1 by the debtors English subsidiary, Lehman Brothers
2 International Europe. Pursuant to that program, the debtors
3 set up approximately 180 special purpose vehicles. Those
4 special purchase vehicles issued notes to investors around the
5 world primarily in Europe, Australia and Asia, and then entered
6 into derivatives contracts with Lehman Brothers Special Finance
7 which were guarantied by Lehman Brother Holdings.

8 As a result, the creditor, in particular, is a
9 special purpose entity which was originally organized by the
10 debtors but which is now essentially defunct. The real parties
11 in interest would be the purchasers of the notes who are
12 scattered around the world who would have to give direction to
13 the trustee under the terms of the deed of trust which is
14 governed by peculiarities of British law.

15 As a result, Your Honor, we think that the process
16 that's -- timing of the process set forth in the proposed bar
17 order is unworkable with respect to our obligations to those
18 holders. We believe that there will be approximately several
19 thousand of these noteholders scattered around the world. The
20 only way the Bank of New York has to communicate with those
21 noteholders is through several of the European clearing systems
22 since the notes are held in the names of depositories. The
23 ultimate beneficial holders, who are the only parties who could
24 give direction with respect to the filing of a proof of claim,
25 are unknown to us as well as to the debtor. Because of the

1 mechanics of having to communicate to these technically known
2 but unidentified holders, through the clearing systems, we
3 believe that the process, which would now be essentially
4 eighty-five days, is unworkable for a couple of reasons.

5 First is the fact of getting the notice out through
6 the clearing systems, then the individual noteholders would
7 have to convene a noteholders meeting at which a vote is given
8 to give direction to the bank with respect to the filing of a
9 proof of claim whether it should be filed or not. Some of
10 these derivative contracts have, in fact, been terminated.
11 Some have not and they're still open. So the question of what
12 to do with those contracts is also something that would have to
13 be taken up by these noteholders.

14 Adding to that complexity is the fact that many of
15 these special purpose vehicles sold the notes to other special
16 purpose vehicles. So this process has to be replicated two or
17 three times. Under the terms of the governing documents, the
18 period for convening a meeting of the noteholders varies from
19 twenty-five to thirty-five days. As a consequence, it's almost
20 unworkable in situations where there are multiple layers of
21 SPVs to get the requisite authority within the eighty-five days
22 contemplated by the initial bar date.

23 Then, of course, there is the additional problem of
24 obtaining the documentation necessary to complete the
25 questionnaire. We believe that since our function as a

1 representative of these known but unidentified noteholders is
2 totally dependent on the instruction we receive and the fact
3 that we're dependent on receiving that direction that there's
4 no reason to have two separate dates. We would not be in a
5 position to file a proof of claim without having all of the
6 information necessary which Lehman says itself needs in order
7 to evaluate the claim.

8 Therefore, I'm not certain that there's any real
9 benefit to the first September bar date. The real value as far
10 as the estate is concerned and as far as we're concerned would
11 be the compliance deadline for the derivative questionnaire.

12 We therefore would recommend that the Court set a
13 procedure with only one date and adopt the later date which is
14 the date on which all of the substantive and supporting
15 documentation necessary to support the proof of claim is
16 available.

17 Setting an earlier bar date only creates an
18 additional layer of complexity and additional potential trip
19 wire for some of these noteholders who may miss it. And
20 really, the benefit, since it has to do with the submission of
21 the questionnaire and the supporting materials, is the
22 effective bar date is in October. So we recommend that the
23 Court set one bar date and adopt the October bar date, Your
24 Honor.

25 THE COURT: Okay. Before I let you go, I want to

1 understand something about the way this functions and what your
2 real interest is. Is Bank of New York the party that would, in
3 the ordinary course, be filing a proof of claim in any event?

4 MR. VENDITTO: No, Your Honor. In the ordinary
5 course, it should be filed by the Lehman SPV. But the SPVs
6 have defaulted under the terms of the documents as a result of
7 the filings by the debtors as well as by LBIE in England.
8 Consequently, the obligation to take enforcement action has to
9 be determined under the terms of the trust documents because
10 the derivative contracts have been pledged as collateral for
11 the underlying obligations of those SPVs to the noteholders.
12 So, essentially, the noteholders would be taking action only as
13 secured parties.

14 THE COURT: All right. So are you just here as a
15 friend of the unknown or are you here to protect your client as
16 against potential liability for failing to act or acting
17 without authority?

18 MR. VENDITTO: Both, Your Honor. We have an interest
19 in ensuring that there's a process here that results in the
20 filing of proof of claims by parties who are entitled to file
21 those proofs of claim. I think that the provisions of the bar
22 order, as they've been hashed and rehashed here, have raised an
23 issue as to ensuring that the party who actually files the
24 proof of claim is legally entitled to do so.

25 As it stands now, here, now and today, we do not have

1 the requisite authority to file the proof of claim. Our
2 obligation on behalf of these unknown noteholders would be to
3 ensure that they receive adequate notice, timely notice of what
4 their obligations are and afford them the opportunity to give
5 us direction.

6 THE COURT: Have you done anything up to this point
7 to try to organize or notify or advise -- you don't need the
8 bar date to know that the bar date's coming. And you don't
9 need a weatherman to know that it's going to be storming in the
10 fall.

11 MR. VENDITTO: Your Honor, we have provided periodic
12 notices to the -- through the clearing systems to the
13 noteholders with respect to key developments in the bankruptcy
14 case. Not knowing exactly what the terms of the bar date order
15 would provide or what the deadlines would be, what the process
16 and procedures would be, we have not given specific notice to
17 the noteholders with respect to the elements of the bar date.

18 THE COURT: Okay. I understand your concern. Thank
19 you.

20 MR. VENDITTO: Thank you, Your Honor.

21 THE COURT: It looks as if we've ended up skipping
22 EMTN and we're down at SPV so we'll just deal with SPV. And
23 then we'll go back to US AgBank and Aviva.

24 MR. SLACK: Your Honor, Richard Slack from Weil
25 Gotshal for the debtors. A couple of observations. First off,

1 as we understand it, the trustee here in this program had to go
2 out, as a factual matter -- I think they had said that there
3 were some contracts that had been terminated and some that had
4 not. So they needed initially to go out and get direction at
5 the very beginning to terminate the transaction which is what
6 has triggered the potential filing of the proof of claim. In
7 other words, with the termination, they would be taking the
8 position that they are owed money. Having terminated the
9 transactions and gotten the direction to do so, there's very
10 little question under the documents. Or put it differently, I
11 haven't seen anything in the filings by the trustee to indicate
12 that doing the ministerial acts that follow from the
13 termination, such as filing a valuation statement and filing a
14 proof of claim, can't be done. In other words, I would say
15 that there's nothing in the record whatsoever at this point,
16 Your Honor, that suggests that there isn't adequate authority
17 to file the proof of claims and that there's really no reason
18 here for any delay.

19 The other point, Your Honor, which I think is an
20 important one, is there's been nine months since the events
21 that I believe they're saying were the cause of the
22 terminations or possible terminations. And I think you hit it
23 on the nose that once they had the direction to terminate, this
24 was a necessary step. In other words, at some point, they knew
25 once they terminated and filed and put into place a valuation

1 statement that they would have to file a proof of claim at some
2 point at some bar date. And so, it is at least a mystery why
3 it has taken this long, if it's at all needed, once they have
4 the ability to terminate.

5 The third point, just looking at the papers, Your
6 Honor, is that there's nothing in the papers that suggests that
7 they can do in 120 days what they're going to be given eighty
8 days to do. In other words, why is the extra forty days
9 necessary? There's absolutely no indication in any papers that
10 were filed by the trustee that they can't do what they need to
11 do in the eighty days even if they've done it.

12 Now, with respect to part of what I heard, it seems
13 to me that the trustee could file, the issuer could file, some
14 kind of a protective proof of claim that resolves the issue.
15 So I think that's another issue that I'm not sure I understand
16 why they need, after getting the direction to terminate, to
17 file some kind of a protective proof of claim at the bar date.

18 So with that, Your Honor, I don't think there's any
19 evidence in the record as to why we need an extra forty days.
20 And what's going to happen in that forty days that couldn't
21 happen in the eighty before it?

22 THE COURT: Anything more on Dante? Okay. Let me
23 return to the more general objection that was articulated by
24 counsel for U.S. AgBank and Aviva, and then I'll comment on
25 Dante.

1 I believe that the general objection that was raised
2 on behalf of U.S. AgBank and Aviva is comparable to objections
3 that were filed during the lead-up to last week's initial
4 hearing on the subject.

5 There were any number of written objections presented
6 by counterparties to derivative transactions that raised
7 questions as to the fairness and reasonableness of compelling a
8 counterparty as part of the proof of claim process to provide
9 the information which is requested in the questionnaire.

10 During the hearing last week I made it clear that
11 while I wasn't necessarily convinced that every piece of
12 information in the questionnaire was the right piece of
13 information because as I've noted, I don't know how to
14 terminate a derivative. But it was clear today and I
15 referenced my general power under Section 105 of the Bankruptcy
16 Code that some specialized claim process was necessarily in
17 this case in order to avoid complete administrative meltdown.

18 I believe that the consensual resolution of virtually
19 every other objection to the notion of a questionnaire speaks
20 loudly to the reasonableness of having some kind of process in
21 place to deliver information to the debtors enabling the
22 debtors, at least initially, to begin to reconcile the
23 derivatives positions in the derivatives book at Lehman's.

24 Absent such a process and procedure I, frankly, don't
25 know how we would get through this case during the remaining

1 years of my term as a bankruptcy judge. And while I say that
2 only half facetiously, I have another ten years left.

3 I remember Bryan Marsal making a presentation in
4 December of last year, in which he stated with the benefit of a
5 PowerPoint presentation his hope, indeed, his expectation that
6 these bankruptcy cases could come to conclusion within perhaps
7 two years. And no one is a fair predictor of the future. But
8 absent the adoption of workable procedures to deal with the
9 approximately million derivative transactions, and the
10 significant exposure that these transactions represent to the
11 debtors' estates, the process of claims reconciliation simply
12 will not take place in an orderly way.

13 Although, it's not part of today's formal record, I
14 noted on a docket of the case two supplemental declarations
15 that were filed over the weekend. One was a supplemental
16 declaration of Gary H. Mandelblatt in support of the debtors'
17 motion, and the other is a declaration of Gregory F. Eickbush.
18 Both of these documents provide answers to some of the
19 questions that I raised last week, and provide further support
20 to the notion that this is an extraordinary situation, one that
21 request procedures that are well crafted to the task at hand.

22 While I heard the various statements that were made
23 by counsel who participated in the ad hoc group process last
24 week, noting that the result was not perfection, but it was
25 improvement, I am satisfied that based upon the representations

1 made, the procedures that are now before me represent a fair
2 balancing of the burdens and benefits as between the debtors'
3 estates on the one hand, and the counter parties to these
4 transactions on the other. And as a result, at least as it
5 relates to the objection articulated over the telephone on
6 behalf of U.S. AgBank and Aviva, I overrule those objections.

7 To the extent those objections may have had some
8 merit before this process began to fully evolve, what has
9 resulted from the consensual process of last week, I believe
10 moots those objections. And in any event, under the
11 circumstances of this case, imposing certain additional burdens
12 on claimants associated with questionnaires, both as it relates
13 to derivatives and guaranteed claims, represents a necessary
14 attribute of administering a case of this magnitude and
15 complexity.

16 Now I think we should deal with the SPV question.
17 I'm sensitive to the argument that was made by counsel for Bank
18 of New York concerning the difficulty in getting direction from
19 a group of noteholders who have been described by known but
20 unidentified. I'm not quite sure what that means. But what I
21 gather by that description counsel means to say that this is a
22 group that's very hard to corral, and perhaps even hard to
23 communicate with. That's a problem for the trustee. But it
24 shouldn't be a problem for the estate. Eighty plus days of
25 time to identify the group and gain direction from the group

1 seems adequate, particularly given electronic communication the
2 ability to publish notice. The fact that there are clearing
3 houses principally in Europe, I believe, involved in this
4 transaction, and it may be that this is a circumstance to try
5 to gain some help from our friends at LBIE, but it shouldn't be
6 a problem for this estate. It's rather a practical problem
7 that arises on account of how these particular notes were
8 originally distributed, through the SPV system. The trustee
9 will simply have to take appropriate action to avoid liability.
10 And I assume that the Bank of New York will do so. So the
11 extent that that constitutes an objection of the procedures,
12 that objection is overruled.

13 Let's go on to EMTN now.

14 MS. FIFE: Thank you, Your Honor. For the record,
15 Lori Fife from Weil Gotshal & Manges on behalf of the debtors.
16 Before we deal with the EMTN, I was asked to advise you that
17 Royal Bank of Scotland and it's affiliates, including ABM Ambro
18 and Sempra participated in the marathon session on Friday.

19 THE COURT: Thank you.

20 MS. FIFE: So the EMTN program -- you probably, Your
21 Honor, have seen a number of objections, in fact, we filed a
22 reply this morning. I'm sorry for the lateness of the reply.

23 But during the time that we were working with the
24 derivative group we were also trying to resolve the objections
25 with respect to the EMTN program. In fact, the creditors'

1 committee was really taking the laboring war with Citibank and
2 some of the other parties in an effort to try to resolve the
3 objections.

4 The EMTN program is a program that was financed by
5 LBHI and a Lehman Brothers Treasury BV and Lehman Brothers
6 Bankhaus AG, but the notes are issued by primarily -- and this
7 is really summary high level because these are extremely -- I
8 mean, derivatives are complex, these notes are really, really
9 complex. And I don't pretend to understand them fully. So at
10 a very high level, I'm generalizing. The notes were issued by
11 Lehman Brothers Treasury BV for the most part and Lehman
12 Brothers Bankhaus AG and other non-debtor entities and,
13 purportedly, guaranteed by LBHI.

14 And they were issued in these European countries with
15 no indentured trustee, under fiscal agent note. And Bank of
16 New York is the holder of a global note and the fiscal agent,
17 but is agent on behalf of the issuer, but doesn't really act on
18 behalf of the holders. There is no party that acts on behalf
19 of the holders. That is how it is done apparently in Europe.
20 That's how these notes and many other corporate notes are
21 issued. So as a result there are -- there's no entity who has
22 authority to act on -- there may not be any entity who has
23 authority to act for these holders. There may. As to some,
24 perhaps the account number, the street name holder might have
25 authority. But, for instance, in Germany we know for a fact

1 the account holders don't have authority, only the beneficial
2 holders have authority.

3 There are more than 4,000 series of these structured
4 notes. These notes, themselves, are based on derivative
5 transactions. So the underlying security is a derivative
6 transaction that's based on an index. The actual note could be
7 worth zero based on an index. It could be worth some money.
8 It could be accelerated. It could have some money. I mean, it
9 could be contingent right now. There are a lot of issues that
10 are undecided at this point in time.

11 We originally took the position that these notes are
12 not appropriate to put on the master securities list because
13 they're not issued by the debtors, and, therefore, they don't
14 belong on the list. And, also, we can't identify the
15 documents, we don't have a lot of the documents, and we also
16 don't acknowledge the liability. So we didn't want to list
17 them on our schedules. We want to preserve the ability to
18 object to the validity of those claims.

19 However, we did recognize the predicament that these
20 holders in these foreign countries, many of whom are moms and
21 pops. I have been convinced after many conversations over the
22 weekend that these notes were actually sold at the retail
23 level. I mean, some of these notes were sold in denominations
24 I'm told of a hundred pounds, even. So we're talking about
25 small denominations. And they did go down to the retail level.

1 So the problem is how do these people have the ability to file
2 proofs of claims? We don't know who to provide notice to. And
3 the only party who really knows is these account holders, the
4 street name holders. And the street name parties, some of whom
5 have objected, like Citibank and Banco Popular, they don't
6 have, necessarily, the responsibility to provide notice to their
7 beneficial holders like an indentured trustee would have that
8 responsibility, or, frankly, like a Merrill Lynch, or an
9 investment banking firm here would have an obligation to notify
10 its customers.

11 So we were in -- we've had numerous conference calls
12 subject to Your Honor, and this is contrary to the theme of
13 today, so I will preface that. However, I do believe that the
14 circumstances with respect to these parties are in a very
15 different than the parties who we have been talking about thus
16 far this afternoon. That we in consultation with the
17 creditors' committee and Bank of New York, and the other
18 parties that are represented here today, I think there are a
19 number of account holders who are represented.

20 Citibank and Banco Popular were very active in
21 negotiating, have reached a settlement of which I will describe
22 for the Court now. What we think is appropriate is that we
23 would modify the proof of claim form. And it would be tailored
24 such that the holders of these structured notes under the EMT
25 program would have a -- well, there would be a list and it

1 would be identified by KESP and ICIN number. And that list
2 would be developed by the debtors, the committee, and certain
3 representatives, interested parties, within five business days.
4 And if we can't resolve that list then the Court would help us
5 resolve it. And what we would attach that list of securities
6 and the proof of claim form would have that list with a box.
7 And a party who holds one of these securities would have to
8 just check the box to indicate the security on which it's
9 submitting this guaranteed claim against LBHI.

10 And we would print the instructions to these holders
11 in other language. We haven't agree on the languages -- not
12 every single language, but we tried to cover as many languages
13 as appropriate. And the notices would have to, of course, be
14 acceptable to Euro Clear and Clear Stream, because they would
15 be sending out the notice.

16 The holders of these notes would not be required to
17 complete the guarantee questionnaire or to submit any
18 documentation. Most of these holders don't actually have any
19 documentation. The account holder or the street name holder
20 actually holds the document. And so we won't require them to
21 do that. And the account holders or the street name holders,
22 and the beneficial holders, either one, can file a proof of
23 claim. And the debtors will waive our right to object on the
24 grounds that any such claim was not filed by the authorized
25 representative. In other words, we're going to give up our

1 right to say that somebody wasn't authorized, which is,
2 obviously, very important to the account holders.

3 But whoever, ultimately, files the proof of claim
4 then has responsibility for that claim. So if Citibank
5 determines that it is going to file claims on behalf of XYZ
6 holder, then it has responsibility for the objections and for
7 prosecuting the claim going forward. And we'll be dealing with
8 that claim. If the beneficial holders file the claim then they
9 would have the responsibility. And other than not objecting
10 with respect to authorization, we reserve our right to object
11 to the claims on any other grounds.

12 We have agreed that because of the language barriers
13 that the parties can file their claims as contingent or
14 unliquidated, which you can do anyway, that's the law. Or they
15 can write, "I don't know the amount of my claim." And we're
16 not going to just deem that as a not valid claim. I mean,
17 we'll take that into consideration. But, of course, we're
18 reserving our right to object to the amount of the claim.

19 And then the debtors are going to provide the bar
20 date notice to Euro Clear and Clear Stream and the
21 representatives of the U.S. -- the non-U.S. Lehman estates, so,
22 BV and Bankhaus and the other non-debtors. And they will then
23 actually provide the notices to the beneficial holders, which
24 will happen five days after we will agree on the KESP and ISIN
25 numbers. And holders -- we have agreed that holders would --

1 or we're proposing that holders would have to November 1st to
2 file their proofs of claims.

3 And that is the resolution that we have reached, Your
4 Honor. And we think that in light of the facts and unusual
5 circumstances that we face here, we think that this is the
6 right balance. It requires parties to file proofs of claims,
7 but it gives those parties a little bit additional time and
8 recognizes the burdens that they have.

9 THE COURT: All right. Is there anyone here on
10 behalf of the EMTN notes, or the parties that might have to
11 file claims on behalf of the noteholders who wishes to be heard
12 with respect to Ms. Fife's rendition of the terms of the
13 settlement? It seems that invitation has prompted a very long
14 line.

15 MR. SHIMSHAK: Good afternoon, Your Honor. Steve
16 Shimshak, Paul Weiss, for Citigroup. First, I wanted to
17 mention that we were a member of the coalition of the
18 willing --

19 THE COURT: Good.

20 MR. SHIMSHAK: -- in the negotiations this week and
21 on the derivative questionnaire.

22 Second, I wanted to confirm that Ms. Fife has
23 accurately presented the understanding, the agreement in
24 principle that we reached. And I, too, want to thank the
25 creditors' committee in their role in bridging what started out

1 as being a very broad gap, but we managed to come up with a
2 program that we think is fair and equitable under the
3 extraordinary circumstances involving these retail holders all
4 around the world.

5 I think that the final scope of the program, the term
6 EMTN, in some ways is shorthanded. It covers a great deal of
7 the holders. There are some other programs -- the schedule, I
8 think is going to be the final detriment of the programs that
9 are within this. But the process is going to be the same for
10 participants in other debt raising programs of Lehman.

11 Finally, Your Honor, because we reached an agreement
12 in principle on our objection, we would propose that if we
13 are -- if this is going to be acceptable, and I know there has
14 to be further hearings, but at some point, I would appreciate
15 an indication of the Court as to how you intend to proceed
16 because we do have two witnesses here. And if we're not going
17 to go forward because the Court feels it's sensible for us to
18 go forward and to finalize this arrangement, we do have to work
19 out language and, obviously, the devils and the details. But I
20 would not want to hold the witnesses here in the courtroom
21 unduly until the end of the hearing.

22 THE COURT: Well, from my perspective, there's no
23 need to call witnesses as to a matter that has been settled.
24 And the only question is whether or not you have doubt as to
25 the settlement.

1 MR. SHIMSHAK: These are our witnesses. I have the
2 level of comfort.

3 THE COURT: Then you can release them.

4 MR. SHIMSHAK: Then I can release them. Thank you,
5 Your Honor.

6 THE COURT: Mr. Handelsman?

7 MR. HANDELSMAN: Good afternoon, Your Honor.
8 Lawrence Handelsman, Stroock & Stroock & Lavan. I'm counsel
9 for Mizuho Investors Securities.

10 We filed an objection with respect to these EMTN
11 notes, and raised exactly the issues that have been addressed.
12 And proposed more or less this solution as one or two possible
13 solutions. We were not part of the conversation, although we
14 tried, that led to this solution. And, of course, we haven't
15 and I don't believe anyone's seen any documents because they're
16 not prepared in terms of modifications to the order to reflect
17 this. So if the order is -- proposed order is revised to
18 accurately -- and I expect it will be, reflect Ms. Fife's
19 recitation, we'll be satisfied. But, of course, we need to see
20 the language before we can say anything.

21 THE COURT: Okay. Subject to documentation, you're
22 on board, however? He didn't say, so I assume that means yes.

23 MR. HANDELSMAN: Oh, I'm sorry, Your Honor. Yes.
24 But we would like to -- we were not permitted the opportunity
25 to participate in conversations, we would at least be permitted

1 the opportunity to see the language before it's finalized and
2 presented.

3 THE COURT: Absolutely. That's what I meant by
4 "subject to documentation".

5 MR. FRIEDMAN: Good afternoon, Your Honor. Jeff
6 Friedman, counsel for the Royal Bank of Canada, Federal Home
7 Loan Bank of New York, credit structured asset management with
8 respect to certain hedge funds that they manage.

9 Your Honor, I just really want to say two things.
10 First, we were part of the ad hoc group that participated
11 Friday in terms of transparency. And, secondly, I'd just like
12 a clarification based on this schedule. I have clients,
13 actually other clients, that have these medium term notes.
14 They're not quite mom and pop, but they're also not JPMorgan.

15 And I just want to clarify to the extent that they're
16 particular KESP and ISIN numbers don't make the proof of claim
17 form. And I don't know whether my clients would want me to
18 participate and try to develop that form for them. Are those
19 people going to have to fill out guarantee questionnaires, or
20 are those people -- obviously, they could file a proof of claim
21 saying this is my bond and I'm the beneficial holder, but will
22 they have to go through the guarantee questionnaire process, or
23 are they going to be excluded and just have to file paper
24 proofs of claim with whatever supporting documentation would
25 support their claim based on the note?

1 THE COURT: Ms. Fife?

2 MS. FIFE: If their notes are not part of this EMTN
3 program, then they will have to file a guarantee questionnaire.
4 But if they are part, then they don't.

5 MR. FRIEDMAN: Whether the ISIN number is listed or
6 not?

7 MS. FIFE: Yes.

8 MR. FRIEDMAN: In order to be part of the program
9 does the note have to be listed, or does it just have to look
10 like one of the agreements?

11 MS. FIFE: It has to be listed.

12 MS. SEGAL-REICHLIN: Good afternoon, Your Honor. Zoe
13 Segal-Reichlin, from Cleary Gottlieb Stein & Hamilton on behalf
14 of Banco Bilbao Vizcaya Argentaria. We were a party to the
15 conversations and can confirm, as Citi's counsel did, that Ms.
16 Fife accurately represented our agreement.

17 I just want to make two points of clarification for
18 the record. The first of which is it was actually Banco
19 Bilbao Vizcaya Argentaria and not Banco Popular that was part
20 of that discussion. As well as Mr. Shimshak noted that the
21 issuances that were under agency agreements were not just the
22 EMTN program, it was other programs as well, which we can also
23 confirm. The notes in question are also not just structured
24 notes, they're also fixed rate notes and floating notes.

25 THE COURT: All right. So if I understand that

1 clarification, I'm just trying to follow this, the EMTN
2 program, which is really the principal focus that we've been
3 talking about relates to certain structured notes that are
4 largely in the hands of retail investors all over the globe.

5 Your clarification point is to note that there are
6 other notes that were represented in the discussions that did
7 not have the benefit of an indentured trustee structure. And
8 it's as to these notes that don't have a home that there'll be
9 the same opportunity to get on the list, is that right?

10 MS. SEGAL-REICHLIN: That's correct. And my
11 understanding from the debtors is that there's no disagreement
12 on that point. But we've been using EMTN as shorthand because
13 it is the largest issuance.

14 THE COURT: So what we're doing is we're expanding,
15 for purposes of today's discussion, the defined term "EMTN" to
16 include a whole bunch of other notes that aren't actually EMTN
17 notes?

18 MS. SEGAL-REICHLIN: Correct.

19 THE COURT: Okay.

20 MR. GOLDMAN: Good afternoon, Your Honor. William
21 Goldman, DLA Piper on behalf of Banco Banif and a number of
22 other Spanish and Austria banks.

23 Just to clarify, as used in our objection, the EMTN
24 program is a particular program that Lehman Brothers --
25 actually, Lehman Brothers Holdings Inc. established. It was a

1 one hundred million dollar program of which about thirty
2 billion dollars were sold to hundreds -- what I gather, is now
3 about a hundred thousand individuals outside of the United
4 States. There are other programs that Lehman had -- I don't
5 represent anyone in connection with those -- which also sold
6 outside the United States. But there is one particular
7 program, with a particular offering circular with what, at
8 least, in our objection we were referring to as the EMTN
9 program or the Euro EMTN program.

10 In any event, we have no problem with the settlement
11 as been proposed, it's consistent with what our objection was
12 about. As with Mr. Handelsman, would like to be included in
13 the draft of the documentation. And assuming it all goes the
14 way it should go, and it's been represented, and I expect it
15 would be, we have no problem with the settlement.

16 THE COURT: Fine. Thank you.

17 MR. KIBLER: Your Honor, John Kibler from Allen &
18 Overy. We represent Banca Akros and a number of other Italian
19 banks.

20 Similar to the other objectants we objected to the
21 imposition of the obligations on guaranteed claimants. We
22 heard the proposed settlement and agree wholeheartedly, subject
23 to documentation. And hope that we just get a copy of it.

24 THE COURT: Fine. Thank you.

25 MR. EGGERMANN: Good afternoon, Your Honor. Daniel

1 Eggermann from Kramer Levin Naftalis & Frankel. I'm not here
2 on behalf of a noteholder, I'm here on behalf of Rutger
3 Schimmel Penek (ph.), who is the court appointed trustee in the
4 Netherlands for Lehman Brothers Treasury Co BV. One of the
5 issuers under the EMTN program.

6 Your Honor, we did not file an objection. We
7 perceive this issue as one between our noteholders and LBHI
8 under the guarantee. And we were not directly involved with
9 the negotiations, although we spoke a little bit with Citibank
10 over the weekend -- or Citigroup, rather. And we indicated
11 that in the spirit of the cross border protocol we are happy to
12 help coordinate the notice process in Europe through the
13 European clearing systems, provided that our involvement does
14 not result in any additional liability to the trustee or any
15 additional costs to the trustee. But we expect the details of
16 that coordination will be worked out between the trustee and
17 LBHI.

18 And one other point I'd like to note. There's been
19 some talk with respect to the EMTN program and the other notes,
20 other than the EMTN program. The LBT issues notes under four
21 programs, one of them was the EMTN program, the other three
22 were called the Swiss program, the Italian program, and the
23 German program. And it's my hope and the trustee's hope that
24 those programs all get treated similarly.

25 THE COURT: Well, I hear the hope, but let me just

1 understand what he proposal is that's before me. Is that
2 something which is acceptable to the estate, or is that a shift
3 in position. Do you want to confer briefly?

4 MS. FIFE: One moment.

5 (Pause)

6 MS. FIFE: Your Honor, nobody has raised this issue
7 from these other programs, so we haven't discussed it with
8 them. And I suppose if somebody comes forward and requests to
9 be added to the list we could consider it. But right now we're
10 really concerned with the EMTN program.

11 THE COURT: Here's part of the confusion that I now
12 have. It's a shame when at 4:30 in the afternoon things are
13 starting to move sideways.

14 MS. FIFE: Right.

15 THE COURT: But when counsel for -- and I hope I
16 pronounce this right, Banco Bilbao, stood up it was for point
17 of clarification that I interpreted, and she agreed with my
18 interpretation, meant that when we use the term EMTN to
19 describe the kinds of notes that could find their way by
20 agreement on to the securities list, which would exempt a
21 holder from having to file a guarantee questionnaire, the
22 answer was yes, it's a broad definition that includes similarly
23 situated noteholders. What I'm hearing counsel for the
24 Netherlands' Trustee say is that this may be a broader universe
25 of potential holders than had been originally contemplated,

1 because it involves different programs; the Swiss, the Italian
2 and the German programs, in addition to the EMTN program.

3 I have no idea how extensive those programs are, what
4 notes were sold, or whether or not they are, in fact, similarly
5 situated in a sense of being retail holders, predominately, as
6 opposed to sophisticated holders. If they're sophisticated
7 holders, they're not entitled to any benefit. No offense to
8 sophisticated holders, but they can take care of themselves.
9 And the reason you put together this exception to the rule, is
10 because we're dealing with widely dispersed individuals who
11 purchased small denomination notes that were issued under the
12 EMT program.

13 So is there, is there not an understanding that we
14 have a broad universe of noteholders to populate this new
15 class? Or is that something to be discussed?

16 MS. FIFE: I need a minute, Your Honor.

17 (Pause)

18 MS. FIFE: We've been advised, Your Honor, that what
19 counsel to Banco Bilbao -- I believe I have it correct -- was
20 referring to the German program and the Italian program. And
21 we've also been advised that the EMTN program represents ninety
22 percent of the notes that were issued by Lehman Brothers
23 Treasury BV. So we're talking about a very small additional
24 amount of notes. And they were issued to the same retail
25 holders. So given that information, we believe it's

1 appropriate to add them to the exception to the bar date, and
2 cover them in this settlement proposal.

3 THE COURT: All right.

4 MS. FIFE: Thank you.

5 MR. EGGERMANN: Just for clarification, that includes
6 the Swiss program?

7 MS. FIFE: Oh, yes. Swiss, German and Italian.
8 Thank you.

9 MR. EGGERMANN: Thank you, Your Honor.

10 THE COURT: Is there anyone else who wishes to speak
11 to this settlement.

12 MR. FLECK: Your Honor, Evan Fleck of Milbank Tweed
13 Hadley & McCloy on behalf of the committee. It's probably
14 appropriate that we speak in support of this proposal because
15 it's something that, frankly, the committee brought the parties
16 together on.

17 In recognition of the fact that this is a very unique
18 circumstances within the context of these cases, where there's
19 not an indentured trustee, and given the body of holders and
20 potential claimants on account of the guarantees, the committee
21 recognized the unique issues here and directed its counsel to
22 try to bridge the gap and reach this solution.

23 In that regard, the committee was also conscious of
24 the fact of not bridging the gap or going too far on account of
25 these particular holders, because there are procedures that

1 apply in these cases and we're comfortable that the procedure,
2 or the process, and the settlement that's been described to the
3 Court as modified in light of the comments that were made is an
4 appropriate one and satisfies the concerns that were raised by
5 the parties, including the committee. And we support it for
6 those reasons.

7 THE COURT: Fine, thank you. Since there's a
8 settlement, it seems that I now resolved I think every
9 outstanding issue that relates to the proposed order. Is that
10 correct?

11 MR. WAISMAN: Your Honor, that is the debtors'
12 understanding. So I think perhaps the only order of business,
13 perhaps, is the way forward to implement everything you heard
14 about today.

15 THE COURT: I think there's a little bit of a
16 drafting exercise which needs to take place, at least as it
17 relates to the EMTN settlement.

18 MR. WAISMAN: That's right, Your Honor. So, perhaps,
19 if we can have the bar date order and its exhibits as modified
20 by the record of the hearing today so ordered, the parties can
21 retreat to draft language to resolve the EMTN and friends
22 issue. It would be our hope that we would have a final version
23 of the bar date order packaged to chambers tomorrow. I would
24 think latest Wednesday. And if we're able to accomplish it on
25 that timetable we would accomplish a mailing of the bar date

1 notice and proofs of claim by next Wednesday, if that all meets
2 the Court's approval.

3 THE COURT: That's fine. I've reviewed the form of
4 order as it has evolved, including reading it, I think, both
5 this morning and over the weekend. I think I've seen multiple
6 versions of it. And I'm satisfied that the parties have made
7 substantial progress that the consensual resolution of
8 disagreements as mediated by the ad hoc group of counterparties
9 and the ad hoc group of EMTN noteholders and friends,
10 represents a very significant achievement in this case and,
11 frankly, is a testament to the high quality of lawyering that
12 has been present in this courtroom from the beginning of this
13 case, not only on behalf of the debtor but on behalf of all
14 parties in interest who have actively participated. This is an
15 extraordinary complex undertaking. Unprecedented, actually, in
16 the history of global finance. And to the extent you get this
17 right the first time, that's an achievement which is probably
18 mostly to be chalked off to good luck.

19 And to the extent that there turns out to be some
20 problems along the way I won't be surprised and I hope we can
21 address them. But I compliment all counsel who have produced
22 this, and I'm sure you'll continue your good work in developing
23 the next generation of this evolving document.

24 Is there more for this afternoon?

25 MR. WAISMAN: Just an expression of gratitude to the

1 Court and chambers for accommodating all the issues that have
2 arisen. And on behalf of the debtors and their professionals,
3 thank you to all of the parties that were involved in all of
4 the groups in the assistance in making this possible.

5 And, finally, just a reminder that there are three
6 stipulations that relate to the bar date order and process that
7 have been submitted to chambers.

8 THE COURT: We'll find them and try to enter them at
9 the same time.

10 MR. WAISMAN: Thank you, Your Honor.

11 THE COURT: Thank you. We're adjourned.

12 (Whereupon these proceedings were concluded at 4:37 p.m.)
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I N D E X

R U L I N G S

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

LISA BAR-LEIB

AAERT Certified Electronic Transcriber (CET**D-486)

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Date: June 30, 2009